THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.15782 OF 2000

DATE: 31-10-2007.

Between :

1. Gajalakshmi Palance, Palakole, West Godavari District,
rep. By its Licensee KSSN. Venkaiah.
2. Veera Hanuman Palance, Palakol, West Godavari District,
rep. By its Licensee Kolluru Venkata Ratnam. …. Petitioners

And

1. Joint Collector & Licensing Authority, West Godavari District., Eluru and another. … Respondents

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ORDER :

The petitioners herein are running Cinema Theatres in Palakol, West Godavari District, having obtained licenses in Form-B under A.P. Cinemas (Regulation) Act, 1955 (for short, 'the Act') and the Rules made thereunder.

The 1st respondent - Joint Collector, who is the Licensing Authority under the Act, vide show-cause notices dated 25-5-2000 and 21-4-2000 called upon the petitioners to show-cause as to why the Form-B licenses shall not be cancelled alleging that they have been running the theatres without paying the entertainment tax and without getting the Form-B licenses renewed. Though the petitioners submitted their explanations stating that they applied for renewal much prior to expiry of their licenses and also explaining the alleged default in payment of entertainment tax, the 1st respondent passed the impugned orders dated 6.8.2000 and 22.7.2000 under Section 10 (2-A) of the Act thereby imposing penalty of Rs.5,000/- and Rs.10,000/- on the petitioners 1 and 2 respectively and further directing that the petitioners shall pay the entertainment tax dues and obtain no due certificate from the concerned officers failing which they shall be liable to pay penalty of Rs.200/- per day. The said orders are under challenge in this writ petition contending inter alia that the non-renewal of Form-B licenses on the ground of alleged arrears of entertainment tax is illegal and without jurisdiction.

Though Rule Nisi was ordered by this Court on 30.8.2000 and

the impugned orders were suspended, no counter-affidavit is filed by the respondents and the interim order continued to be in operation all through.

I have heard the learned counsel for the petitioners and perused the material on record.

In the show-cause notice, it was alleged that the petitioners committed default in making the renewal application within 90 days before the expiry of license as required under Rule 12-A of the A.P. Cinemas (Regulation) Rules, 1970 (for short, 'the Rules'). It was also alleged that the petitioners having committed default in payment of entertainment tax had violated Condition No.46 of the Form-B license.

In their explanations, the petitioners submitted that though they made the applications for renewal within the time prescribed under Rule 12-A of the Rules, the respondents have neither granted nor rejected their request and no decision was communicated to them.

The said explanation offered by the petitioners was rejected merely observing that the same was not satisfactory.

It is to be noted that under Rule 12-A of the Rules, 1970, every application for renewal of a license shall be made within 90 days before the expiry of the license sought be renewed. As per Rule 12-B (1) of the Rules, the Licensing Authority shall dispose of such application within 15 days of its receipt either granting or refusing the renewal. Rule 13 (7) (b) of the Rules further made it clear that in case no permit or order of refusal or the renewal is received before the expiry of the licenses, the licensee shall be deemed to be a valid holder of license.

So far as the other allegation of default in payment of entertainment tax is concerned, Condition No.46 of the License in Form-B provides as under :

> *"The licensee shall not commit any offence punishable under the A.P. Entertainment Tax Act, 1939."*

It is true that in their explanations the petitioners did not deny the allegation that they were in arrears of entertainment tax.

However, the question is whether the same would be a valid ground for imposing penalty in exercise of the power conferred under Section 10 (2-A) of the Act.

The learned Counsel for the petitioners contended that no penalty can be imposed in exercise of the power conferred under sub-section (2-A) of Section 10 of the Act unless a finding is recorded that the license is liable to be revoked or suspended under sub-section (2) of Section 10 of the Act. A reading of sub-section (2) of Section 10 of the Act shows that before revoking or suspending the license, the licensing authority has to satisfy himself that the license was obtained by misrepresentation or fraud as to an essential fact or that the licensee has failed to comply with any of the provisions of the A.P. Cinemas (Regulation) Act, 1955 or the Rules made thereunder or any of the conditions of the license.

In the case on hand, the allegation was that the petitioners fell in arrears of entertainment tax. The petitioners submitted their explanations explaining the said allegation. In the circumstances, it is mandatory for the 1st respondent to consider the same and assign the reasons for not accepting the said explanations and also to record his satisfaction that the alleged default on the part of the petitioners would amount to violation of the conditions of license.

Admittedly no reasons were assigned in the impugned orders and the penalty was imposed mechanically without application of mind to the explanations offered by the petitioners.

The law is well-settled that the absence of reasons is one of the grounds for exercising the power of judicial review under Article 226 of the Constitution of India since the failure of the authority to assign reasons results in violation of principles of natural justice.

Hence, the impugned orders are liable to be set aside on that ground alone.

Accordingly, the Writ Petitions are allowed and the orders impugned are set aside. However, this shall not preclude the respondents to pass fresh orders following due process of law in the light of the observations made above. No costs.

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G. ROHINI, J.

Dt. 31–10-2007

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